

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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MUSTAFA-EL K.A. AJALA  
formerly known as Dennis E. Jones-El,

Plaintiff,

OPINION AND ORDER

13-cv-638-bbc

v.

WILLIAM SWIEKATOWSKI, GARY BOUGHTON,  
PATRICK BRANDT, MICHAEL DELVAUX  
and WILLIAM POLLARD,

Defendants.

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This case was severed from a larger case in which pro se prisoner Mustafa-El K.A. Ajala brought many claims about his conditions of confinement at the Wisconsin Secure Program Facility in Boscobel, Wisconsin. Ajala v. Tom, No. 13-cv-102-bbc (W.D. Wis.). In this case, plaintiff alleges that various prison officials disciplined him because of a grievance he filed about prison conditions, because he is an African American and because he is a Muslim, in violation of his right to free speech, equal protection and due process. He has made an initial partial payment of the filing fee as required by 28 U.S.C. § 1915(b)(1), so his complaint is ready for screening under 28 U.S.C. §§ 1915(e)(2) and 1915A.

Plaintiff alleges that defendant William Swiekatowski (a correctional officer) fabricated a conduct report against him for various offenses such as gang activity and conspiring to riot because plaintiff had brought a group administrative complaint about

prison conditions; defendant Gary Boughton (the security director) authorized the false conduct report; defendants Patrick Brandt and Michael Delvaux (the hearing officers) found plaintiff guilty of the conduct report and sentenced him to 360 days of segregation despite a conflict of interest after a hearing during which they relied on false evidence and refused to consider exculpatory evidence. Defendant William Pollard (the warden) affirmed the disciplinary decision. Many prisoners were accused of participating in the conspiracy, but only African American and Muslim prisoners were disciplined.

Although plaintiff provides few details in his complaint, I conclude that his allegations are minimally adequate to state a claim upon which relief may be granted under theories of retaliation, discrimination and a violation of due process. With respect to his claims of retaliation, he identifies his protected conduct and characteristic, along with the alleged act of retaliation and discrimination of each defendant. Swanson v. Citibank, N.A., 614 F.3d 400, 403 (7th Cir. 2010); Higgs v. Carver, 286 F.3d 437, 439 (7th Cir. 2002). Prison officials may not retaliate against a prisoner for complaining about prison conditions or discriminate against him because of his race or religion. Powers v. Snyder, 484 F.3d 929, 932 (7th Cir. 2007); Antonelli v. Sheehan, 81 F.3d 1422, 1433 (7th Cir. 1996).

With respect to plaintiff's due process claim, he alleges that he received 360 days in segregation, which is enough at the pleading stage to trigger the protections of the due process clause. Marion v. Columbia Correctional Institution, 559 F.3d 693, 697 (7th Cir. 2009) (disciplinary segregation can trigger due process protections depending on the duration and conditions of segregation; prisoner stated a claim under the due process clause

by alleging that he was placed in segregation for 240 days without due process). In addition, he alleges that defendants Brandt and Delvaux were biased against him at the disciplinary hearing. Because one of the requirements of the due process clause is an impartial decision maker, Powers v. Richards, 549 F.3d 505, 511-12 (7th Cir. 2008), I will allow plaintiff to proceed on a due process claim as well.

Plaintiff should know that he will not be able to stand on his allegations at later stages in the case, but will have to come forward with specific facts showing that a reasonable jury could find in his favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986); Fed. R. Civ P. 56. Claims for retaliation and discrimination present classic examples of claims that are easy to allege but hard to prove. Many pro se plaintiffs make the mistake of believing that they have nothing left to do after filing the complaint, but that is far from accurate. A plaintiff may not prove his claim with the allegations in his complaint, Sparing v. Village of Olympia Fields, 266 F.3d 684, 692 (7th Cir. 2001), or his personal beliefs, Fane v. Locke Reynolds, LLP, 480 F.3d 534, 539 (7th Cir. 2007). Plaintiff will have to submit evidence either at summary judgment or at trial that defendants disciplined him because of the exercise of his constitutional rights or because of his race or religion and not for some legitimate reason. This applies equally to defendant Pollard, who approved the disciplinary decision. Ashcroft v. Iqbal, 556 U.S. 662, 677 (2009) ("[P]urpose rather than knowledge is required to impose . . . liability on the subordinate for unconstitutional discrimination; the same holds true for an official charged with violations arising from his or her superintendent responsibilities.").

## ORDER

IT IS ORDERED that

1. Plaintiff Mustafa-El K.A. Ajala, formerly known as Dennis E. Jones-El, is GRANTED leave to proceed on his claims that defendants William Swiekatowski, Gary Boughton, Patrick Brandt, Michael Delvaux and William Pollard disciplined plaintiff because of a grievance he filed and because of his race and religion, in violation of his rights to free speech and equal protection.

2. Plaintiff is GRANTED leave to proceed on his claim that defendants Brandt and Delvaux did not act as impartial decision makers during his disciplinary hearing, in violation of the due process clause.

3. For the time being, plaintiff must send defendants a copy of every paper or document that he files with the court. Once plaintiff learns the name of the lawyer who will be representing defendants, he should serve the lawyer directly rather than defendants. The court will disregard documents plaintiff submits that do not show on the court's copy that he has sent a copy to defendants or to defendants' attorney.

4. Plaintiff should keep a copy of all documents for his own files. If he is unable to use a photocopy machine, he may send out identical handwritten or typed copies of his documents.

5. Pursuant to an informal service agreement between the Wisconsin Department of Justice and this court, copies of plaintiff's complaint and this order are being sent today to the Attorney General for service on defendants. Plaintiff should not attempt to serve

defendants on his own at this time. Under the agreement, the Department of Justice will have 40 days from the date of the Notice of Electronic Filing of this order to answer or otherwise plead to plaintiff's complaint if it accepts service for defendants.

6. Plaintiff is obligated to pay the unpaid balance of their filing fees in monthly payments as described in 28 U.S.C. § 1915(b)(2). The clerk of court is directed to send a letter to the warden of plaintiff's institution informing the warden of the obligation under Lucien v. DeTella, 141 F.3d 773 (7th Cir. 1998), to deduct payments from plaintiff's trust fund accounts until the filing fee has been paid in full.

Entered this 24th day of January, 2014.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge